

DIRECTV believes the use of a Latin American orbital slot is permissible but not a Canadian orbital slot.⁵⁸

There is also precedent for allowing a Canadian company to use a U.S. satellite to provide DTH in Canada. Power/DIRECTV, which is owned 80.01% by Power Broadcasting, Inc., a Canadian company, and 19.99% by DIRECTV, was granted a license to provide a DTH service to Canada. Power/DIRECTV planned to provide a variety of both Canadian programming and non-Canadian programming. The Canadian programming services would be distributed using a Canadian satellite and the non-Canadian programming services would be distributed in Canada using high-powered U.S. satellites owned and operated by DIRECTV. Under this proposal, Canada permitted the use of a U.S. satellite in the provision of a DTH service in Canada.⁵⁹ While TelQuest recognizes that Power/DIRECTV ultimately decided for business reasons (particularly due to the burgeoning gray market in Canada) not to pursue its DTH license, Power/DIRECTV's receipt of the DTH license for a service that would utilize a U.S. satellite is further evidence of reciprocity vis-a-vis Canada.

E. CANADA'S REQUEST FOR MODIFICATION OF THE
REGION 2 BROADCAST SATELLITE SERVICE PLAN
DOES NOT WARRANT DENYING TELQUEST'S APPLICATIONS.

The Petitioners attempt to derail TelQuest's applications by arguing that unresolved issues raised by Canada's International Telecommunications Union ("ITU") submission preclude the Commission from considering TelQuest's applications (see, e.g., Petitions of

⁵⁸ Id. at 9-10.

⁵⁹ Canadian Radio-television and Telecommunications Decisions CRTC 95-901 and 95-902.

MCI and DIRECTV). Such Petitioners' arguments are supported by neither the Commission's policies nor its rules.

1. THE COMMISSION IS NOT REQUIRED TO WAIT FOR THE MODIFICATION OF THE BSS PLAN FOR REGION 2 BEFORE GRANTING TELQUEST'S APPLICATIONS.

Contrary to such Petitioners' allegations, ITU approval of Canada's application for modification of the BSS plan for Region 2 and completion of interference analyses in connection with that application are not prerequisites to the grant of Telquest's uplink applications. The Commission's rules do not set forth any such prerequisite. Rather, Section 25.310 of the Commission's Rules merely states that transmit/receive earth station applications "may be subject to restrictions as a result of international agreements or treaties," and that the Commission "will maintain public information on the status of any such agreements." There is no suggestion, however, that the Commission is precluded from taking any action on an application as a result of these treaties and agreements.

In fact, there is clear precedent to the contrary. On numerous occasions, applicants for earth station licenses and space station licenses, including Echostar and USSB, have requested that the Commission grant applications that raised international interference issues or required modification of the Region 2 Plan, and therefore required ITU approval. Each time, the Commission granted the application subject to ITU approval.

Less than four months ago, for example, the Commission granted Echostar's request for authority to launch its USABSS-3 satellite for use in the DBS service on the condition that (1) "ITU confirms that the operation of USABSS-3 is in conformance with Appendices

30, 30 A and Resolution and Resolution 42 of the ITU Radio Regulations," (2) that "until the Region 2 Plan is modified to include the technical parameters of USABSS-3, this satellite will not cause harmful interference to or receive protection from other assignments that are in conformance with Appendix 30 of the ITU Radio Regulations," and (3) that EchoStar "coordinates its operations with the operation of in-orbit United States DBS service providers before it brings its satellite into service."⁶⁰

The Commission has also granted applications even where the applicant has not yet provided the technical information required for international coordination. Hughes Communication Galaxy, Inc., 10 FCC Rcd 10425 (1995). Notably, the Commission granted USSB's 1990 application to launch two satellites to provide DBS service before USSB had supplied the technical information required under Annex 2 of Article 30 of the ITU regulations. Application United States Satellite Broadcasting Company, Inc., 5 FCC Rcd 7576 (1990). In that case, the Commission granted USSB's application based on the understanding that the prospective license may have to be modified or altogether rescinded should subsequent technical studies show that USSB was acting in violation of Region 2 Plan interference parameters. See also Direct Broadcasting Satellite Corporation, 8 FCC Rcd 7959 (1993). In fact, in its NPRM on the revision of the DBS rules, the Commission plainly acknowledged that DIRECTV's and USSB's existing DBS operations "vary from the BSS Plan" and that any such deviations "are undertaken at the

⁶⁰ Echostar Satellite Corporation, DA 96-3, (rel. Jan. 11, 1996); see also Earthwatch Incorporated, 10 FCC Rcd 10467 (1995).

operator's risk until the BSS Plan is formally modified and the modifications are notified to the ITU."⁶¹

In granting these applications, the Commission independently determined that the applicants' proposals would likely comply with ITU regulations. The Commission can do the same here. TelQuest has made every effort to assist the Commission's review of Canada's ITU application and to ensure that affected parties are provided with an opportunity to respond to that application. The Commission clearly has the authority to make an independent finding that the application and proposed services will, upon modification of the Region 2 Plan, comply with ITU regulations, and it has exercised that authority in connection with applications by EchoStar, USSB and DIRECTV. Echostar and DIRECTV were granted licenses by the Commission and launched their satellites, even though to date, these licensees' proposed modifications of the Region 2 Plan have yet to be published in accordance with ITU Article 4 notice and comment procedure. Thus, EchoStar, DirectTV and USSB, who are currently operating absent the completion of ITU procedures and absent modification of the Region 2 Plan, have absolutely no grounds for claiming that the Commission should deny TelQuest's applications on this basis, no more than it should revoke the DBS licenses of Echostar, DIRECTV and USSB.

In this case, the Commission's concerns are necessarily limited to whether TelQuest's uplink applications comply with FCC rules and case precedent, which they do. Although TelQuest will certainly benefit from a grant of Canada's application to the ITU

⁶¹ DBS Auction NPRM ¶ 19.

for modification of the Region 2 Plan, it is not TelQuest's application to submit or prosecute. Nor is it the Commission's responsibility to fulfill the function of the ITU. This the Commission clearly recognizes, given that the FCC has many times granted an application, fully knowing that the applicant's plans were ultimately contingent on the resolution of frequency coordination issues and receipt of ITU approval. In short, the Commission has the authority to grant TelQuest's uplink applications absent resolution of the ITU process, and it should do so.

2. THE UNITED STATES SHOULD NOT OBJECT TO CANADA'S PROPOSED ITU MODIFICATION BECAUSE IT WILL BENEFIT SMALL U.S. COMPANIES AND CONSUMERS.

MCI urges the United States to object to Canada's ITU modification proposal on various policy grounds. However, MCI ignores the one policy objective most valued and encouraged by the U.S. -- the expansion of marketplace competition and the eradication of barriers to entry. An objection by the United States will foreclose a significant opportunity for a U.S. company -- the ownership of 22 transponders on a satellite located in a Canadian DBS orbital slot -- thus shutting the door on at least one small company's ability to realistically compete in the BSS market. In addition, such an objection will foreclose the United States' ability to meet consumer demand for BSS services.

Similarly, MCI's request for public comment over and above that which is already required through traditional ITU coordination procedures should be denied. MCI's request is nothing more than a smokescreen to further delay the ITU approval process and thereby allow MCI the opportunity to obtain further leverage in its

negotiations with TCI. The Commission's traditional process is to distribute Canada's ITU filing to U.S. satellite licensees for their comments, and then evaluate any licensees' responses to identify interference concerns. The Commission's actions are in accordance with law and more than adequate to protect the interests of those in the United States who may be affected by Canada's proposed modification.

III. CONCLUSION

If the public interest is to be served, the Commission will reward TelQuest's efforts to provide competition to those large corporations that now oppose it, and will not indulge the efforts of Petitioners, who merely seek to eliminate a potential competitor. A grant of TelQuest's applications is critical to ensuring an opportunity for numerous small U.S. businesses to participate in DBS spectrum-based services. It will allow a small U.S. company, TelQuest, the unique opportunity to own 22 transponders on a satellite located in a Canadian DBS orbital slot capable of full-CONUS coverage. If the Commission truly intends to pursue the pro-competitive agenda directed by the 1996 Act and expedite the delivery of innovative DBS services to U.S. consumers, then it will give TelQuest the opportunity to offer its wholesale service.

For the foregoing reasons, TelQuest urges the Commission to grant TelQuest's applications and dispose of the Petitioners'

thinly veiled efforts to erect barriers to entry for small U.S.
competitors in the DBS market.

Respectfully submitted,
TELQUEST VENTURES, L.L.C.

By: James U. Troup
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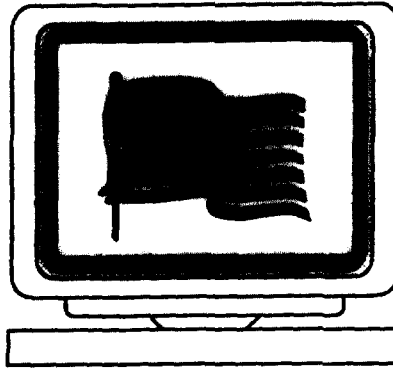
Its Attorney

May 6, 1996

TABLE OF EXHIBITS

- Exhibit 1 Letter to William F. Caton from Robert L. Schmidt, President, Wireless Cable Association International, Inc., dated April 25, 1996.
- Exhibit 2 Department of Justice Comments to Auction NPRM, dated November 20, 1995.
- Exhibit 3 Declaration of Jared E. Abbruzzese, dated May 5, 1996.
- Exhibit 4 Letter from Consumer Project on Technology to the Honorable Reed Hundt, dated April 16, 1996.
- Exhibit 5 Letter from Bell Atlantic International to Jared E. Abbruzzese, dated February 14, 1996.
- Exhibit 6 Letters from various groups in support of TelQuest's applications.
- Exhibit 7 Failure to Communicate, THE FINANCIAL POST, April 15, 1996 at 6.
- Exhibit 8 Canada Seeks Changes in ITU Broadcast Satellite Plan for Americas, SATELLITE WEEK, April 19, 1996.
- Exhibit 9 Nader Group urges U.S. control of Telesat signals, THE FINANCIAL POST, April 18, 1996 at 1.
- Exhibit 10 MCI Complicates Canadian DBS Picture, SATELLITE BUSINESS NEWS, April 22, 1996.
- Exhibit 11 Press Release of MCI, dated April 25, 1996.
- Exhibit 12 Going For It In DBS, BROADCASTING & CABLE, April 29, 1996 at 6-7.
- Exhibit 13 Ottawa considering space-slot auction, THE TORONTO STAR, April 17, 1996 at B3.
- Exhibit 14 Declaration of Barbara Sparks, dated May 5, 1996.
- Exhibit 15 Letter from Telesat Canada to Acting Secretary William F. Caton, dated May 6, 1996.

TVA . . .



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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

TELEVISION VIEWERS OF AMERICA

April 26, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20006

RE: An application by TelQuest Ventures, L.L.C. for a license for a fixed satellite transmit/receive earth station and a blanket license for receive-only earth stations. (758-DSE-P/L-96 and 759-DSE-L-96)

Dear Mr. Caton:

As the president of the Television Viewers of America, I represent consumers across the country interested in the development of the television market in a way that serves the needs of everyday people.

One of our top priorities is to ensure that as the television market grows and changes open competition and choice are preserved. We strongly believe competition is the best way to ensure consumers get the kinds of services they want at prices within their means.

It is with this concern in mind that I write to strongly support TelQuest Venture's application for a license that will allow it to provide subscription television service. In my continuing support for greater competition and more choices for consumers, I believe TelQuest's venture will directly benefit consumers in several ways.

First, more competitors is almost always a good thing for consumers. There is a limited amount of spectrum available for use. The more companies that occupy that spectrum the better.

Second, as the changes in communications industry increase to warp speed, smaller companies are at risk of being swallowed by their larger competitors. TelQuest offers one way for these companies to continue to compete. In order to stay in the market and continue to offer their services to consumers, these local, independent companies need access to the same resources that more established companies enjoy. In my opinion, TelQuest will provide access to those resources.

EXHIBIT 1



WIRELESS CABLE ASSOCIATION INTERNATIONAL, INC.
1140 Connecticut Avenue, NW * Suite 810 * Washington, DC 20036 *
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April 25, 1996

Hand Delivery

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Applications of TelQuest Ventures, LLC, for Authority to
Establish Earth Stations for Operation with a Canadian
DBS Satellite. File Nos. 758-DSE-P/L-96 and 759-DSE-L-96

Dear Mr. Caton:

By this letter, the Wireless Cable Association International, Inc. ("WCA") wishes to express its strong support of the abovereferenced applications by TelQuest Ventures, LLC ("TelQuest") to establish a digital DBS service using a Canadian satellite.

The WCA is the trade organization of the wireless cable industry. Wireless cable operators are multichannel video programming distributors ("MVPDs") using 2 GHz terrestrial microwave facilities to serve subscribers. Wireless cable holds the most promise or any other medium to become a viable competitor to franchised cable systems in the MVPD marketplace, as well as an important option for consumers not passed by cable. Wireless cable also has the potential to become a serious competitor to DTH DBS service because of its ability to provide local programming as part of its service.

Favorable FCC action on TelQuest's application is important to WCA because of the benefits that would flow to wireless cable operators. TelQuest proposes to make its digital satellite feed available to wireless cable operators and other small, competitive MVPDs. Due to limited channel capacity (only 12 full-time and 20 part-time channels are allocated for wireless cable use), wireless cable operators can only compete effectively with other MVPDs through the use of digital compression. A digital satellite feed will allow wireless cable operators to remain competitive while avoiding the enormous capital investment that would otherwise be necessary for digital compression equipment at each system headend.

Grant of TelQuest's application would further serve the public interest by advancing the Commission's statutory mandate to foster small business participation in the communications industry. Section 309(j) requires the FCC to "disseminat[e] licenses among a wide variety of applicants, including small businesses." The vast majority of wireless cable companies are small, entrepreneurial organizations -- exactly the kind of businesses Congress intended to encourage with Section 309(j) of the Communications Act.

TelQuest would also provide local wireless cable operators with access to interactive technology and other services that are otherwise out of their reach. TelQuest recently acquired

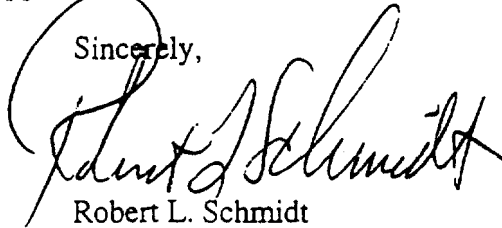
Digital Broadband Applications Corp. ("DBAC"), which developed the only switched digital video
William F. Caton
April 25, 1996
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network in the US today. DBAC provides the first MPEG-2 digital integration facility and develops subscriber management and related software. All these services will further enable wireless cable operators to compete in an increasingly competitive marketplace.

In addition, TelQuest's services would help wireless cable operators realize full value for the substantial sums they contributed to the U.S. Treasury in the recently-concluded Multipoint Distribution service ("MDS") auction. These frequencies are only valuable as part of an economically viable service. The digital capability and cutting-edge interactivity that TelQuest offers are crucial to ensuring the competitiveness of the wireless cable industry.

TelQuest's application would benefit the wireless cable industry and competition in the multichannel video marketplace generally. The WCA urges the Commission to act expeditiously and favorably on the above-referenced applications.

Sincerely,



Robert L. Schmidt
President

cc: Larry A. Blosser
Thomas Tycz
Joslyn Read
Troy Tanner
Suzanne Hutchings

EXHIBIT 2

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Before the
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Washington, D.C. 20554

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In the Matter of

Revision of Rules and Policies for the
Direct Broadcast Satellite Service

)
) IB Docket No. 95-168
) PP Docket No. 93-253
)

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November 20, 1995

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Summary

The United States Department of Justice submits these comments in the Direct Broadcast Satellite auction rulemaking proceeding.

As the Commission recognizes in its NPRM, the MVPD market today is essentially a series of local monopolies controlled by cable television firms. DBS could help to resolve this problem by offering a potentially close substitute for cable. The number of firms that can provide DBS service, however, may be limited. The Department believes that in these circumstances the Commission should act to promote DBS as a competitive alternative to cable. A structural rule will achieve this objective and may do so in a less intrusive manner than the behavioral restrictions proposed in the NPRM. The Department also believes that the Commission should prohibit the acquisition of channels at any of the three primary full-CONUS orbital slots by cable television firms, or by combinations of cable television firms, that control service to a large share of the nation's cable subscribers. Cable firms exceeding the proscribed share could still bid at auction on channels that become available for assignment, but grant of DBS construction permits would be conditional upon divestiture of cable assets.

This rule would prevent DBS spectrum from being assigned to firms that may have greater incentives to use DBS in a way that is less than fully competitive with cable television.

The Department also urges the Commission to adopt rules to prevent

anticompetitive conduct by wholesale DBS providers. In coming years, wholesale DBS service may offer MVPDs an efficient means to expand their channel offerings. To the extent that suppliers of such services are vertically integrated and have market power, they may have the incentive and the ability to harm competition in the separate markets for MVPDs and programming vendors. The Department therefore suggests that the Commission extend the principles of equal access and nondiscrimination, as articulated by Congress in the 1992 Cable Act and by the Commission in its own rules, to providers of wholesale DBS service.

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Washington, D.C. 20554

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)

COMMENTS OF THE
UNITED STATES DEPARTMENT OF JUSTICE

The United States Department of Justice (Department) submits the following comments in the above captioned proceeding. In the proceeding's Notice of Proposed Rulemaking (NPRM), the Commission proposes several measures to promote competition in the market for multichannel video program distribution (MVPD). As one of the Federal agencies responsible for enforcing the antitrust laws and promoting competition, the Department has participated in prior Commission proceedings involving the role of competition in telecommunications. Here, the Department believes that the Commission's concerns and objectives are fully appropriate. In some areas, however, the Commission may want to consider whether its concerns could more effectively be met by more direct measures.

I. **The FCC Should Seek To Promote Competition In The MVPD Market**

As the Commission notes in its NPRM, "Promoting competition is . . . an

important part of our public interest mandate." NPRM, ¶ 33. Indeed, the courts have long held, federal agencies must take into account, among other considerations, antitrust and competitive concerns in determining whether a statutory public interest standard is met. E.g. McLean Trucking Co v. U.S., 321 U.S. 67, 79-80 (1944); Northern Natural Gas Co. v. FPC, 399 F.2d 953, 961 (D.C. Cir. 1968); see also FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978). Promoting competition in the MVPD market is an essential consideration in this proceeding.

The MVPD market today is effectively a series of local monopolies controlled by cable television companies. As the Commission observes in its NPRM, although "MVPDs using technologies other than cable are emerging, local markets for the distribution of video programming remain highly concentrated, with cable systems continuing to have market power." NPRM, ¶ 36. Nationwide, including both areas with cable and those without, cable television firms provide the MVPD service to approximately 90% of all MVPD consumers. 1994 Cable Competition Report, 9 FCC Rcd 7442, 7540 (1994). And, after exhaustive study of the MVPD market, the Commission concluded only a year ago:

Today, most local markets for multichannel video programming distribution services are supplied by monopoly cable systems. At present, competitive rivalry in most local multichannel video programming distribution markets is largely, often totally, insufficient to constrain the market power of incumbent cable systems.

Id. at 7556.

Because these monopoly cable systems continue to possess substantial

market power in the MVPD market, the Commission should seek to ensure that the development of potentially competitive distribution technologies will not be impeded, either by regulatory policy or by the actions of monopoly cable systems. Direct Broadcast Satellite service is one of the alternative distribution technologies that could bring much-needed competition to this market. While it continues to face substantial obstacles to widespread consumer acceptance, DBS uses currently available technology that offers nearly ubiquitous coverage, with sufficient channel capacity to offer service comparable to the services currently offered by cable systems.

DBS service has the potential to be a closer substitute for cable television than does medium power fixed satellite service.¹ DBS's high power transmission enables subscribers to receive its signals with small receive antennas suitable for use in urban and suburban markets, which are almost completely served by cable systems. The lower power transmission of fixed service satellites, and the consequent need for somewhat larger receive antennas, makes fixed satellite multichannel service less competitive in the urban/suburban markets now dominated by cable. On the other hand, the larger receive antennas needed for fixed satellite multichannel service may be less of a disadvantage in rural or outlying areas, which now are less likely than urban/suburban areas to be served

¹ In U.S. v. Primestar Partners, L.P., SDNY No. 93 Civ. 391 (1994), the Department entered into a consent judgment with Primestar Partners, L.P., concerning certain potentially anticompetitive actions by a consortium of cable companies who proposed to provide multichannel video service over a medium power satellite in the fixed satellite service.

by cable.

Thus, the potential of DBS technology as a tool for competition in the MVPD market is critically important. The number of firms who can utilize that technology, however, is limited by the number of available slots. There may be room in the marketplace for viable DBS providers at only three orbital slots. Only three of the currently assigned DBS orbital slots, we understand, can be used to provide strong coverage of the full continental United States. These are the assignments at 119° W, 110° W and 101° W. See footnote 77 of the NPRM. Although the Commission indicates, at ¶ 44 of the NPRM, that full CONUS coverage could be achieved by a DBS satellite at 61.5° W, a satellite operating from that location will transmit only an attenuated signal to the Pacific coastal states. Any firm using this slot would still face the same high start-up costs of other DBS firms, but could expect to attract fewer customers nationwide.

II. The Commission Should Adopt a Structural Approach to Ensuring Competition between DBS and Cable.

As the Commission rightly observes in its NPRM, ¶ 36, "cable operator acquisition of resources that are essential inputs of non-cable distribution technologies . . . may have the effect of further concentrating [the MVPD] market, and further enhancing cable operator market power." In particular, "Failure of DBS systems to provide competition to other MVPD systems will be felt particularly in those markets where a DBS operator may be affiliated with a non-DBS MVPD." NPRM, ¶ 34. The Commission proposes several measures to

address this problem. The Commission points out, however, that it is also willing "to revisit the extent to which cable operators may hold DBS permits or make use of DBS facilities." NPRM ¶ 36. It invites comments on "whether a more stringent limitation should be placed on cable operators seeking to acquire DBS licenses or to operate a DBS service, and whether such a limitation should be related to the size of the MVPD involved." NPRM, ¶ 40.

The Commission proposes the following measures: 1) Cable operators may not control or use DBS channels at more than one full-CONUS DBS orbital location; 2) Cable operators may not offer DBS service primarily as an ancillary service to the services of affiliated cable systems, or provide DBS service to subscribers of those systems under terms different from the terms offered to non-subscribers; and 3) DBS operators may not provide transponder capacity to any entity that grants an MVPD an exclusive right to distribute DBS services within, or adjacent to, its service area. NPRM ¶¶ 40, 39, 55 and 56.

The Department fully agrees with the Commission's purpose to promote competition in the MVPD market, and with its recognition that unrestrained control of DBS slots by cable systems may threaten such competition. Firms that own cable systems which have monopoly power in some geographic areas are likely to have different economic incentives than DBS providers who are unaffiliated with cable systems. DBS entrants who are unaffiliated with cable systems can be expected to offer products and set prices in ways that will maximize their profits in the DBS business. A DBS operator affiliated with cable

systems, however, is likely to offer DBS products and prices that will maximize its aggregate profits in both DBS and cable. Since such a firm will wish to protect its monopoly profits in the cable business, it could have less incentive to offer DBS service that competes against cable.

An extreme example of such behavior would be for the cable firms to provide grossly inferior DBS service or even no DBS service at all, offering little or no competition to cable. Such extreme behavior may be unlikely in an auction-environment. However, there would be a significant risk of more subtle forms of curtailed competition if large cable systems are permitted to control DBS channels. Cable firms in DBS might, for example, primarily offer programming service that does not compete with cable head to head. They might also engage in pricing strategies that are less fully competitive with cable rates.

There may be, as noted above, room in the marketplace for viable DBS providers at only three orbital slots. The Commission's rules will permit a single party to hold all 32 of the channels at each of those slots. Thus, the market could end up with only three DBS providers. Even if only one of those three providers is a large cable firm or combination of cable firms, DBS competition with cable will be significantly reduced. Although the cable/DBS provider might still face competition from two independent DBS providers, the incentives of a cable-controlled DBS firm to restrain output and set higher prices could well reduce the incentives of the other two firms to compete vigorously. Those firms would recognize that they can now set higher prices as well and not lose business to

their cable/DBS competitor.

In addition, the Commission's proposed rules would not prevent different cable firms from controlling different DBS orbital slots. One can imagine, for example, the nation's two largest cable firms controlling two DBS slots, and some combination of the remaining cable firms controlling a third slot. If there are only three viable DBS slots, all three would then be controlled by cable firms. Competition among DBS providers inter se would in that case likely be dramatically reduced. All would be engaged in essentially the same profit maximizing strategies, the effect of which would be significantly less competition in the MVPD market.

The risk to competition in allowing large cable television firms to become DBS providers is particularly illustrated at the local level. Although DBS is a nationwide service, its marketing, installation and service infrastructure are still based within local markets. DBS competition with cable in those respects is still carried out at the local level. DBS providers controlled by large cable firms are less likely to compete vigorously at this level with their own cable television systems. A single cable television firm may, for example, completely dominate provision of MVPD service in a metropolitan area. After it completes its pending purchase of Viacom's cable systems, for example, Tele-Communications, Inc. (TCI), will control service to approximately 90% of the cable subscribers in the San Francisco television market, 90% in the Seattle market, and 60% in the Portland market. Broadcasting & Cable, July 31, 1995, p. 28. A cable firm which

dominates a local market to this extent would be in a position to discriminate in the provision of DBS service to that market. For example, the Commission's proposed rules would not prohibit a cable/DBS provider from charging higher prices to DBS customers in areas where that provider offers cable service.

The impact on MVPD competition of cable entry into DBS depends, of course, upon the size of the cable firm. A cable firm with a small fraction of the nation's cable subscribers will have relatively little to gain from employing DBS strategies designed to shelter its monopoly profits in cable. Any effort by it to restrain DBS output or to set higher DBS prices may cause it to lose more in nationwide DBS revenue than it would retain in sheltered rents from its cable subscribers. For that reason, a rule that would allow the control of DBS channels by such smaller cable firms, e.g., individual firms with fewer than 10% of the nation's cable subscribers, likely would not entail undue risks to competition. However, a very large cable firm, or combination of firms, will have strong incentives to use any DBS license in ways that would not undermine monopoly cable profits.

For these reasons, the Department believes that the Commission should consider a simple, structural, approach to achieve its goal to promote competition in the MVPD market. In contrast to such a structural approach, the alternative measures proposed by the Commission may actually be more intrusive than is necessary to achieve the goal of vigorous MVPD competition. Relatively little would be gained, for example, by imposing behavioral restrictions upon small cable